

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Applications of)	MM Docket No. 93-94
)	
SCRIPPS HOWARD)	File No. BRCT-910603KX
BROADCASTING COMPANY)	
)	
For Renewal of License of)	
WMAR-TV, Baltimore, Maryland)	
)	
and)	
)	
FOUR JACKS BROADCASTING, INC.)	File No. BRCT-910903KE
)	
For Construction Permit for a)	
New Television Facility on)	
on Channel 2 at)	
Baltimore, Maryland)	

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To: The Honorable Richard L. Sippel
 Administrative Law Judge

COMMENTS ON "MOTION FOR ACCEPTANCE OF AMENDMENT"

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys, hereby comments on the "Motion for Acceptance of Amendment" filed by Scripps Howard Broadcasting Company ("Scripps") on May 11, 1994. While Four Jacks does not oppose the acceptance of Scripps Howard's amendment for reporting purposes, Four Jacks does submit that the matters reported therein warrant a fresh look at whether, in light of a continuing pattern of adjudicated anticompetitive misconduct by media subsidiaries it controls, Scripps Howard is qualified to remain the licensee of WMAR-TV.

1. Scripps Howard's amendment reports the issuance of a decision (the "Coleman decision") on April 11, 1994 in the Superior Court of California, Sacramento County, against

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Sacramento Cable Television ("SCT") -- a cable operator of which a wholly-owned subsidiary of Scripps Howard is general partner and a 95% equity owner. Specifically, the court found that SCT violated two California laws against anticompetitive practices. Based on the complaint, SCT did so by charging cable customers less in areas where it faced competition than in areas where it faced no competition, "with the intent to destroy competition." Amendment to Renewal Application at 2.

2. This is not the first time that SCT has been adjudicated guilty of anticompetitive conduct. On two occasions at the outset of this hearing, Four Jacks sought the addition of issues to determine whether Scripps Howard is qualified to be a Commission licensee in light of the 1987 decision of the U.S. District Court for the Eastern District of California in Pacific West Cable Co. v. City of Sacramento, 672 F. Supp. 1322 (E.D. Cal. 1987) ("PacWest"). There, the jury found that SCT obtained its Sacramento cable franchise through a "sham" process involving SCT's making of illegal payoffs, in-kind services, and increased campaign contributions in exchange for a monopoly franchise. See Four Jacks' Request to Certify Application for Review (filed April 8, 1993); Four Jacks' Petition to Enlarge Issues Against Scripps Howard Broadcasting Company (filed May 13, 1993) ("Petition to Enlarge"), at 3-5.

3. As Four Jacks showed in its May 13, 1993 Petition to Enlarge, the PacWest jury verdict does not even begin to represent the entire history of anticompetitive misconduct by Scripps Howard media companies. For instance, following the

PacWest verdict, SCT engaged in a campaign of retaliation against PacWest, its would-be competitor, ultimately engaging in predatory pricing and other actions designed to drive PacWest out of business. SCT also instituted legal actions against the City of Sacramento in an effort to foreclose the municipality from permitting competition. See Petition to Enlarge at 5-7 & Ex. 1. Moreover, Scripps Howard's cable subsidiary in Glasgow, Kentucky brought legal action to stop a would-be competitor, only to be sued itself by the competitor for discriminatory pricing in an effort to drive out the competition. Id. at 8-9. All of the legal actions involving Scripps Howard cable subsidiaries were settled out of court, in most cases with Scripps Howard paying substantial sums of money to its opponents, and in all cases with the factual allegations of misconduct by Scripps Howard companies left unresolved.

4. Though concerns with media-related anticompetitive activity "have occupied a unique position in the Commission's regulatory scheme," see Policy Regarding Character Qualifications in Broadcast Licensing, 102 F.C.C.2d 1179, 1201 (1986), the Presiding Judge denied Four Jacks' May 13, 1993 Petition to Enlarge. See Memorandum Opinion and Order, FCC 93M-445 (released July 8, 1993). The Judge did so in large part on the ground that the anticompetitive misconduct of Scripps Howard media subsidiaries had not been adjudicated and, in the case of the PacWest verdict, the Scripps Howard company was not a named party to the lawsuit. Id. at 6, ¶¶ 14-15.

5. Such is not the case with the decision reported in Scripps Howard's instant amendment.^{1/} It is enough that the Coleman decision reflects yet another item on a lengthy list of anticompetitive practices by Scripps Howard media companies.^{2/} Moreover, the Coleman decision represents a second adjudicated finding of such misconduct. And with respect to the Coleman decision, Scripps Howard cannot claim that it was not a party; SCT is the named defendant in the lawsuit.

6. Given yet an additional adjudication of anticompetitive misconduct by an entity ultimately controlled by Scripps Howard Broadcasting Company, Four Jacks submits that it is time to take a fresh look at whether, on this independent ground,^{3/} Scripps Howard is qualified to hold the license for WMAR-TV in Baltimore. This time, Scripps Howard cannot claim that SCT had no opportunity to represent itself in the case against it. This new finding of anticompetitive conduct by a Scripps Howard-controlled media company is reason for the Judge to revisit the question of whether issues should be added to explore the effect of Scripps

1/ Though the court's decision is nominally styled a "tentative" decision, there appears to be nothing "tentative" about the finding that Scripps Howard's Sacramento cable subsidiary engaged in violations of California anticompetition statutes. According to the amendment, the only issue yet to be resolved is the restitution to be paid by the Scripps Howard-controlled franchisee. Amendment to Renewal Application at 1.

2/ Four Jacks noted the pendency of the Coleman lawsuit in its May 1993 Petition to Enlarge. See Petition to Enlarge at 8 & Ex. 4.

3/ There remain, of course, the character issues already added against Scripps Howard for its deceitful conduct in this hearing.

Howard's long history of thwarting media competition on its basic licensee qualifications.

Respectfully submitted,

FOUR JACKS BROADCASTING, INC.

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Dated: May 20, 1994

CERTIFICATE OF SERVICE

I, Leslie B. Payne, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza, L.L.P., do hereby certify that true copies of the foregoing **"COMMENTS ON 'MOTION FOR ACCEPTANCE OF AMENDMENT'"** were sent this 20th day of May, 1994, by first class United States mail, postage prepaid, to the following:

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